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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,072	07/24/2003	Larry Bone	02280.003270	3104
5514	7590	06/29/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/627,072	Applicant(s) LARRY BONE	
	Examiner Gary E. Elkins	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 12-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20031024, 20040121</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 12-20 are objected to because they include reference characters which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, last line, "said front panel flap" is unclear since a plurality of front panel flaps were previously set forth in the claim.

In claim 1, last 3 lines, it is unclear how a single sidearm is capable of interleaving between a plurality of side panels and one of the front panel flaps, i.e. it would appear, as disclosed, that a single sidearm is only capable of interleaving between one of the side panels and one of the front panel flaps.

The last three lines of claim 1 render claim 1 unclear with respect to what is being claimed. In the completed, carton, the sidearms, as shown in the drawings are located between the side panels and the front panel flaps. The recitation that they are "capable of interleaving..." implies that some other intermediate product, e.g. the blank is being claimed.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desmond (fig. 11 emb) in view of Buford. Desmond discloses an access panel 32, sidearms 42, a bottom panel 19, side panels 46, front access opening (formed by a portion of front panel 22 when opened), front panel flaps 34 and top panel or covering 17. Desmond does not disclose a lip accommodation panel on an inner side of the front panel and hinged to the access panel. Buford teaches that it is known to form a lip accommodation panel 48 connected to an access panel 50 and located behind a portion 31 of a front panel to space the access panel upwardly from the bottom. It would have been obvious to make the carton of Desmond with a lip accommodation panel positioned on the inside of the front panel as taught by Buford to space the access panel upwardly from the bottom.

5. Claims 1-4, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aaron in view of Buford. Aaron discloses an access panel 10, sidearms 11, a bottom panel 20, side panels 32, front access opening A, front panel flaps 22 and top panel or covering 16. Aaron does not disclose a lip accommodation panel on an inner side of the front panel and hinged to the access panel. Buford teaches that it is known to form a lip accommodation panel 48 connected to an access panel 50 and located behind a portion 31 of a front panel to space the access panel upwardly from the bottom. It would have been obvious to make the carton of Aaron with a lip

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accommodation panel positioned on the inside of the front panel as taught by Buford to space the access panel upwardly from the bottom.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in either paragraph 4 or 5 above, and further in view of either Scherr or Valiulis. Each of modified Desmond and modified Aaron fails to disclose a means for affixing the carton to a surface. Each of Scherr and Valiulis teaches that it is known to make a display dispensing carton with means (hook and loop fasteners; holes to receive a hanging rod, respectively) to affix the container to a surface during use. It would have been obvious to make the container of Desmond or Aaron with means to affix the container to a surface as taught by either Scherr or Valiulis to allow easier display and use of the container, e.g. in a store.

7. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 3 in either paragraph 4 or 5 above, and further in view of Ours et al. Each of modified Desmond and modified Aaron fails to disclose a holding means on the sidearm to hold the access panel in a predetermined open position. Ours et al teaches that it is known to make sidearms with holding means formed by the notches adjacent the projections 38 to hold the access panel in a predetermined open position. It would have been obvious to make the sidearms in either Desmond or Aaron with holding means as taught by Ours et al to prevent the access panel from inadvertently returning to a closed position.

***Allowable Subject Matter***

8. Claims 5 and 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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9. Claims 12-20 would be allowable if rewritten or amended to overcome the claim objection set forth in this Office action.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

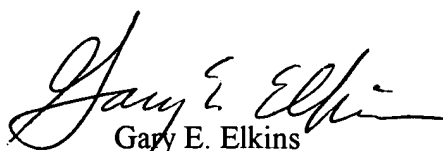
Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.

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A handwritten signature in cursive script, reading "Gary E. Elkins".

Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee

26 June 2005